

SERGEANT FREDY CRUZ

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

EDMIN ALICEA,

Plaintiff,

-against-

THE CITY OF NEW YORK,
POLICE OFFICER ALEJANDRO RIVAS (TAX 925987),
DETECTIVE RICHARD BABOOLAL (TAX 924906), and
POLICE SERGEANT FREDY CRUZ (TAX 915528),

Defendants.

Case Number: 13 CV 7073 (JGK) (GWG)

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26 Court Street
Brooklyn, New York

August 20, 2014
10:21 a.m.

EXAMINATION BEFORE TRIAL of Defendant

SERGEANT FREDY CRUZ, taken by the Plaintiff, held at
the above time and place, before Joseph Adler, a
Stenotype Reporter and Notary Public of the State of
New York, pursuant to Notice and stipulations
between counsel.

ORIGINAL

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2 A P P E A R A N C E S:

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4 REIBMAN & WEINER, ESQS.

5 Attorneys for the Plaintiff
6 26 Court Street, Suite 1808
7 Brooklyn, New York 11242

8 BY: JESSICA MASSIMI, ESQ.

9

10 NEW YORK CITY LAW DEPARTMENT
11 OFFICE OF THE CORPORATION COUNSEL
12 Attorneys for the Defendants
13 100 Church Street
14 New York, New York 10007

15 BY: BRIAN J. FARRAR, ESQ.

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2 STIPULATIONS

3 IT IS HEREBY STIPULATED AND AGREED, by and
4 between the attorneys for the respective parties
5 herein, that the sealing and filing of the within
6 deposition be waived.

7

8 IT IS FURTHER STIPULATED AND AGREED that
9 such deposition may be signed and sworn to before
10 any officer authorized to administer an oath, with
11 the same force and effect as if signed and sworn
12 before the officer before whom said deposition is
13 taken.

14

15 IT IS FURTHER STIPULATED AND AGREED that
16 all objections, except as to the form are reserved
17 to the time of the trial.

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2 S E R G E A N T F R E D Y C R U Z, called as a
3 witness, having first been duly sworn by the Notary
4 Public (Joseph Adler), was examined and testified as
5 follows:

6 EXAMINATION BY

7 MS. MASSIMI:

8 Q Good morning, Sergeant.

9 A Good morning.

10 Q Could you do me a favor and just state
11 your name for the record?

12 A Name is Sergeant Cruz, C-R-U-Z, Fredy
13 first name, F-R-E-D-Y.

14 Q. What is your work address?

15 A. 1 Police Plaza, New York, New York 10038.

16 Q My name is Jessica Massimi. I am an
17 attorney, and I represent Edmin Alicea, the
18 plaintiff in this case. I am going to be asking you
19 some questions today about an incident that began on
20 March 27 of 2012. Do you understand that you have
21 taken an oath to tell the truth here today?

22 A Yes.

23 Q Do you understand that that is the same
24 oath that you take when you go to court?

25 A Yes.

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2 elaborate on that for me. Specifically, what were
3 your duties during that day?

4 MR. FARRAR: Objection.

5 Q On March 27, 2012?

6 A That day I -- I had a court case. I went
7 down to court. Once I was finished with my court
8 case, I came back to the precinct. Once I came back
9 to the precinct, we -- I looked at some of the
10 places we had been receiving complaints about
11 regarding narcotics activity, and at that point, I
12 gathered up my Conditions Unit and instructed them
13 that we were going to look into that location.

14 Q Just tell me everything that you did that
15 day. Go on.

16 MR. FARRAR: Objection.

17 Q On your shift on March 27, 2012.

18 A What I just said. I went to court.

19 Q Yes?

20 A After court, I came back to the precinct.

21 Q Yes?

22 A Once I was back at the precinct, we
23 decided to -- to address the narcotic conditions at
24 that location.

25 Q At what location?

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2 A What was that? 172 between Audubon and
3 Saint Nicholas.

4 Q Then what else did you do for the rest of
5 your shift that day? Just tell me everything in
6 chronological order that you did that day.

7 MR. FARRAR: Objection.

8 A That was it. The officers were -- went
9 out on the field, and I stayed at the precinct.

10 Q What did you do when you stayed at the
11 precinct?

12 A I can't say. I don't remember.

13 Q Do you remember anything that you did
14 after you sent the officers out?

15 A No, I can't say. It's --

16 Q What time did you send the officers out?

17 A I don't remember.

18 Q From that point on, you do not recall
19 anything else you did?

20 MR. FARRAR: Objection.

21 A No.

22 Q When you said you gathered up the
23 Conditions Unit, who did you gather up, to use your
24 words?

25 A Officer Baboolal, Officer Rivas, Officer

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2 McGrawth, Officer Arrico. That I remember, yeah,
3 that's -- that's it.

4 Q Who was Officer McGrawth's partner on
5 March 27, 2012?

6 MR. FARRAR: Objection.

7 A I don't remember.

8 Q Who was Officer Baboolal's partner on
9 March 27, 2012?

10 MR. FARRAR: Objection.

11 A I don't remember.

12 Q Who was Rivas's partner on that day?

13 MR. FARRAR: Objection.

14 A I don't remember.

15 Q Who was Arrico's partner on that day?

16 MR. FARRAR: Objection.

17 A I don't remember.

18 Q Who were the other members of the
19 Conditions Unit on that day?

20 A Just the ones that I mentioned to you.

21 Q Those were the only four that were on duty
22 that day during your shift?

23 A Yeah, that I remember.

24 Q What did you tell them after you gathered
25 them up?

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2 MR. FARRAR: Objection.

3 A That we were addressing the narcotic
4 conditions at 172 between Audubon and Saint
5 Nicholas.

6 Q How did you decide to address conditions
7 in that area that day?

8 A Once again, as I mentioned before,
9 complaints that I received from the community, 911
10 jobs, 311 jobs.

11 Q What do you mean? Do you mean just
12 citizens calling in to 911 and 311 giving
13 complaints?

14 A Right, right.

15 Q Who gives those complaints to you?

16 A Those -- those are generated through the
17 computer, and we get them. I also get phone calls.
18 Attending the meetings. There's a church nearby.

19 Q How many complaints do you have to receive
20 before you decide to send the Conditions Unit to a
21 particular area?

22 MR. FARRAR: Objection.

23 A No. There's no given amount of
24 complaints.

25 Q What circumstances have to exist in order

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2 for you to make a determination that a particular
3 area is a drug-prone area?

4 MR. FARRAR: Objection.

5 A No. There is no criteria.

6 Q How do you decide that a particular area
7 is a drug-prone area?

8 A Well, if you receive the job after a
9 couple of 911 jobs indicating the same location or
10 maybe 311, people using the 311 system, you'll see
11 how many complaints that area has received, how many
12 phone calls.

13 Q You are saying that before you decided to
14 send a Conditions Unit to this area, 172nd Street
15 between Audubon and Saint Nicholas, you received 311
16 complaints, 911 complaints, and what other types of
17 complaints did you receive?

18 A Phone calls from the community.

19 Q In any of those 911 complaints, were there
20 any descriptions provided of any purported criminals
21 or perpetrators?

22 MR. FARRAR: Objection.

23 Q That you recall?

24 A No.

25 Q What about in any of the 311 complaints

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2 that you received? Any physical descriptions
3 provided?

4 A No.

5 Q Did you take any phone calls regarding
6 that area on 172nd Street between Audubon and Saint
7 Nicholas that provided you with any physical
8 descriptions of any purported perpetrators?

9 A I've got phone calls but no description.
10 Just location.

11 Q When you sent the Conditions Unit out that
12 day, you were not looking for anyone in particular?

13 A No.

14 Q When you advised Baboolal, Rivas,
15 McGrawth, and Arrico on that day, who did you assign
16 to be the observation point?

17 A Officer Baboolal.

18 Q Had Officer Baboolal arrived for duty that
19 day in uniform or in plainclothes?

20 MR. FARRAR: Objection.

21 A If he arrived?

22 Q Did he show up for work that day wearing
23 his uniform or plainclothes?

24 A No, I can't -- I can't say if he was in
25 uniform.

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2 Q Why did you select Officer Baboolal to be
3 the observation point?

4 A No particular reason. No particular
5 reason.

6 Q Did he maybe say I will be the observation
7 point?

8 A No. No particular reason. Everybody
9 has -- everybody takes a turn whenever we do some
10 sort of operation like that.

11 Q Did you assign Rivas, McGrawth, and Arrico
12 to be the catch car?

13 A Yes.

14 Q Did you assign anyone in particular to be
15 the driver?

16 A No.

17 Q Did you assign anyone in particular to be
18 the recorder?

19 A No.

20 Q Did they ever tell you who had decided to
21 be the recorder versus the driver?

22 A No.

23 MS. MASSIMI: Can you just give me one
24 second?

25 (A recess was taken from 1:21 to 1:25.)

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2 MR. FARRAR: Objection.

3 A First of all, I'm the supervisor to the
4 arresting officers. I was advised of the arrests,
5 so therefore I'm the supervisor for the arrest. I'm
6 the supervisor that could have been out in the field
7 and supervised that arrest.

8 Q This notation under next to Linasay
9 Daniels's entry, what does that say?

10 A I can't say. I can't -- it's hard to
11 read. It's hard to read.

12 Q Did you interview Linasay Daniels at the
13 precinct?

14 MR. FARRAR: Objection.

15 A I don't remember.

16 Q Did you have any conversations with her?

17 A I don't remember.

18 Q You mentioned earlier that you believed
19 that she was also alleged to have purchased drugs
20 from the same seller that your officers are claiming
21 Mr. Alicea purchased drugs from; is that correct?

22 A Yes.

23 Q How did you come to find that out?

24 A By speaking with Officer Baboolal.

25 Q How did Officer Baboolal get that

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2 information?

3 MR. FARRAR: Objection.

4 A His observation.

5 Q When did Officer Baboolal inform you that
6 he had observed Linasay Daniels buying drugs from
7 this seller?

8 A Sometime soon after or before -- what's
9 his first name?

10 Q Edmin.

11 A -- Edmin arrived to the precinct.

12 Q Was it over a radio?

13 A Again, it could have been point to point.
14 A lot of times that's what we use, point to point.

15 Q What did he tell you about his
16 observations of Linasay Daniels?

17 A That he had -- he observed her purchasing
18 from the same dealer.

19 Q In what location?

20 A From the same location.

21 Q Which would be?

22 A I would have to look at the arrest report.

23 Q Exhibit 1? Just take a look at it.

24 A It looks like 172 between Saint Nick and
25 Audubon Avenue.

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2 Q Officer Baboolal was the observation point
3 for Linasay Daniels's arrest?

4 A Yes.

5 Q Who was the catch unit for her arrest?

6 A That, I don't remember.

7 Q Was Officer Baboolal working with any
8 other unit that day or just with the Conditions
9 Unit?

10 MR. FARRAR: Objection.

11 A He was with us, Conditions Unit.

12 Q There only would have been one other catch
13 unit that day?

14 MR. FARRAR: Objection.

15 A That, I can't remember, if we had one or
16 two cars.

17 Q We can just go back and do this again.

18 You testified earlier that there were four members
19 of the Conditions Unit working that day, right?

20 A Yes.

21 Q You said Baboolal was going to be the
22 observation point, and then McGrawth, Arrico, and
23 Rivas were going to be in the catch unit?

24 MR. FARRAR: Objection.

25 Q Correct?

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2 A Yes.

3 Q What would have been the other catch unit
4 that would have apprehended Linasay Daniels?

5 A Sometimes we have two cars. On this
6 particular day, it looks like we just had one car.

7 Q Who would have served as the catch unit
8 for Linasay Daniels's arrest if Officer Baboolal was
9 the observation point?

10 A It would have to be the same individuals
11 that I just mentioned to you.

12 Q McGrawth, Arrico, and Rivas?

13 A Right.

14 Q Okay.

15 A I wasn't there when -- when they brought
16 her in out of the car.

17 Q You were not there. Right.

18 A Yeah, I wasn't there.

19 Q Yes. No, no. I -- you do not know
20 when -- I get that. But it appears from this
21 command log that there were no other arrests brought
22 in between Edmin Alicea and Linasay Daniels?

23 A Yes.

24 Q When Edmin Alicea was brought in by
25 Officer Rivas, what other officers were present with